IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 4 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF GIFT TAX

Versus

GAUTAM SARABHAI LTD.

Appearance:

1. GIFT TAX REFERENCE No. 4 of 1989
MRS.MAUNA BHATT FOR MR MANISH R BHATT for the Revenue
MR. B.D.KARIA FOR MR. R.K.PATEL for the Assessee

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 30/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench "C" has referred the following question of law for the opinion of this Court under Section 26 of the Gift Tax Act, 1958 :

"Whether the Tribunal is right in law and on facts in holding that no taxable gift or deemed gift under Section 4(c) of the G.T. Act stands proved to have been made by the company in favour of Smt.Sarabhai and thereby deleting the same?"

2. The relevant Assessment Year is 1969-70. The assessee - Private Limited Company was assessed for the said year under Section 15(3) of the Act. Notice was issued under Section 16(1) on the assessee company in respect of the waiver of the outstanding amount of Rs.1,67,500=00 as payable by Smt. Giraben Sarabhai to the Housing Society as contribution in respect of apartments Nos.A/91 and A/101 and garage space No.19 as well as an amount of Rs.4,000=00 deposited by the Housing Society with the Small Causes Court, Bombay in Civil Suit No. 531/5728 of 1965 by the Housing Society. The Co-operative Housing Society had entered into a composite agreement with the assessee and Smt. Giraben on 18th December 1968 whereunder the reversionary rights of the assessee in the land which was leased to the Housing Society were purchased by the Society for Rs.20.55 lakhs from the assessee and the assessee was to withdraw two suits filed by it against the society. In that agreement, by clause (8), it was agreed that the society will waive the aforesaid two amounts which were payable by Smt. Giraben who was the sister of one of the Directors of the assessee company, to the society. The Gift Tax Officer found that the agreement dated 18-12-1968 was a composite agreement dealing with several disputes and it was provided therein that even if the sale of reversionary rights did not take place, it would not vitiate the other agreements contained therein. The G.T.O. noted that, from clause (8) of the agreement, it was clear that Smt.Giraben was discharged fully from the liabilities towards the society. While dealing with the contention that the assessee company had not made any gift, and that, if anything was relinquished, it was by the society and not by the assessee company, the G.T.O. held that the company had forgone its claim in the two suits which contained claims for rent dues against the society and agreed to sell reversionary rights in the land on its part, and, on the part of the society, the

claim against Smt. Giraben was to be given up and a sum of Rs.20.55 lakhs was to be paid for the reversionary rights. The G.T.O. held; "Thus, there is mutual consideration. Forgoing of dues from Smt. Giraben Sarabhai amounting to Rs.1,71,500=00 by the society is part and parcel of the consideration of the composite agreement." It was held that, in between the assessee company and the society, there was consideration for forgoing the dues from Smt. Giraben Sarabhai and therefore, on the part of the society, there was no gift in favour of Smt. Giraben Sarabhai. However, the situation was different in the case of the assessee company in relation to the securing of the release of dues from Smt. Giraben Sarabhai by the society. It was held that the company did not get any consideration from Smt. Giraben Sarabhai for getting her the release from the society. On the other hand, it had paid the consideration to the society by agreeing to composite agreement forgoing its claim and agreeing to sell its reversionary rights in the land for Rs.20.25 lakhs which amounted to paying the dues of Smt. Giraben Sarabhai to the society by the assessee company without getting in turn anything from Smt. Giraben. It was held that this was clearly a gift or atleast a deemed gift. The G.T.O. observed that Gautam Sarabhai, Director of the Company, is brother of Smt. Giraben Sarabhai and this relationship may have played a part in the gift by the company to Smt. Giraben Sarabhai. The G.T.O. accordingly held that the release amount of Rs.1,71,500=00 by the order dated 13-3-1982 was a gift by the company and taxed an amount of Rs.1,61,500=00 after deducting the statutory exemption of Rs.10,000=00.

3. The Commissioner of Gift Tax (Appeals) dismissed the assessee's appeal by finding in paragraph 4 of his order that; "There was a direct and distinct surrender of a right and an actionable claim by the assessee company in favour of Ms. Giraben Sarabhai, who was not at all a party to the original lease.....". It was held that the assessee company had surrendered its actionable claim vis-a-vis M/s Malabar Co-operative Housing Society to provide monetary benefit to Ms. Giraben Sarabhai who was the sister of the main director of the assessee company. The appellate authority found no infirmity in the view taken by the G.T.O. and upheld his order.

4. The Tribunal, in the appeal by the assessee, held that the assessee company was not person responsible for the release or discharge within the meaning of clause (c) of section 4 of the Act, though the assessee had waived its claim of Rs.1,17,500=00 in favour of Smt. Giraben

Sarabhai resulting in her release or discharge from her obligation to pay the said amount to the society. It was further held, assuming that the assessee company was "person responsible" for the said release or discharge, the same was made by the society by way of compromise of its dispute concerning the property of the assessee company and therefore, the release or discharge was not without consideration in money or moneys worth. It was observed that, as per the case of the Revenue itself, the company had secured release in favour of Smt. Giraben by forgoing its own claim for arrears of rent against the society and therefore, since the consideration came from the third party, the release or discharge by the society was not without consideration. It was further held that, from the history of litigation of the society and the company and its sister concern, it could be reasonably inferred that the said release or discharge in favour of Smt. Giraben was bona fide by way of settlement of disputes concerned the property between the society and the company. The Tribunal, therefore, held that no taxable gift or deemed gift under Section 4(c) was proved to have been made by the company in favour of Smt. Giraben Sarabhai during the year under consideration, and allowed the appeal of the assessee.

5. The learned counsel for the Revenue contended that Giraben's personal liability was waived by the company without consideration as a result of the composite agreement by which the leasehold rights of the society were terminated and ownership rights were created by the assessee in favour of the society and therefore, the release amounted to a deemed gift by the company. It was contended that the company was the person responsible to ensure the release of the debt of Giraben who was a member-tenant of the society, and that such release was not bona fide, because, Giraben was a sister of the managing director of the assessee company and only her dues were released by the assessee, while the debts of other members of the society were not released. Moreover, she was not a party to the original lease in favour of the society, but was made a party in the composite agreement only with a view to get her released from the dues payable by her to the society.

6. The learned counsel appearing for the assessee company contended that there was, in fact, no gift made by the assessee since there was no transfer of property by the assessee in favour of Smt. Giraben. It was also contended that there was even no deemed gift made by the assessee under Section 4(c) of the Act, because, the release of debt was made by the society in favour of Smt.

Giraben and the society was the person responsible for the release, because, it had chosen to waive the debt and not the assessee company. The counsel argued that, assuming for the sake of argument that the assessee was responsible for the release of the debt by the society, there was no finding to the effect that the release was not bona fide. In fact, the G.T.O. had found that the composite agreement was for valid consideration and the society had released the debt of Giraben because of the consideration emanating from the assessee under the composite agreement.

6.1 The learned counsel, in support of his contentions, relied upon the following decisions :

[a] The decision of the Bombay High Court in Keshub Mahindra v. Commissioner of Gift Tax, Bombay city, reported in 70 ITR 1 was cited for the proposition that, in construing commercial contracts, the tax authorities and the Tribunal must have regard to normal business considerations and look at the substance of the commercial transactions rather than the particular form they assume in a given case. They must not assume that every large transaction is a good potential source of revenue and then proceed to determine how much tax can be gathered from it, otherwise they are bound to fall into error and also make business impossible.

[b] (i) The decision of the Gujarat High Court in Commissioner of Gift Tax v. Smt. Ansuya Sarabhai, reported in 133 ITR 108 was cited to point out that, in context of the provisions of section 4(1)(c) of the said Act, this Court held that a mere reading of the said provision shows that, before any release or surrender can be dubbed a deemed gift, it must be shown by the revenue that the G.T.O. was satisfied with respect to that release or surrender that it was not bona fide made by the concerned party. In the absence of any such satisfaction being reached by the G.T.O., the document in question would remain outside the scope of section 4(1)(c) and cannot be styled as a deemed gift.

(ii) The decision of the Supreme Court, by which the aforesaid decision of this Court was affirmed and which is reported in 239 ITR 262, was also cited. The Supreme Court, noting that the transaction was held to be bona fide and a

unilateral act, held that the High Court was right in holding that there was no transaction exigible to tax within the meaning of the Gift Tax Act.

[c] The decision of the Allahabad High Court in Sir Padampat Singhania v. Commissioner of Gift Tax, reported in 172 ITR 292 was referred, to point out that the High Court, after tracing the genesis of the provisions of Section 4(1)(c) of the Act, held that, keeping in view the legislative background and the provision of section 4(1)(c), it was clear that the transaction of release or surrender etc. are caught within the mischief of the said provision, only if such transactions, resulting in release or surrender, etc., is not bona fide made to the satisfaction of the Gift Tax Officer. The Court held that, in order that the transaction was bona fide, it must be shown that everything was done in an open and straightforward manner without subterfuge or concealment of any kind or in an attempt to make the transaction appear other than what it was in reality.

[d] The decision of the Rajasthan High Court in Smt. Vidyawati Devi Rathi v. Commissioner of Gift Tax, reported in 169 ITR 708, which was rendered in context of the provisions of Section 4(1)(c), was cited to point out that, on the basis of the circular of the Central Board of Revenue, New Delhi, issued on February 27, 1959, the Court observed that the object underlying the said provision was to rope in so-called business transactions which were really gifts in a camouflaged form. The Court held that, in order to bring the case within the ambit of section 4(1)(c) of the Act, it was necessary for the department to show that the agreement in question was not bona fide. On facts, it was found that there was no material on record to show that the agreement suffered from lack of bonafides or was not genuine.

7. The provision of section 4(c), which falls for our consideration, reads as under :

"Sec.4. Gifts to include certain transfers.-- For the purposes of this Act,--

(a) xxx xxx xxx xxx xxx

(b) xxx xxx xxx xxx xxx

(c) where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment, to the extent to which it has not been found to the satisfaction of the Gift-tax Officer to have been bona fide, shall be deemed to be a gift made by the person responsible for the release, discharge, surrender, forfeiture or abandonment;

(d) xxx xxx xxx xxx xxx "

7.1 It will be noticed from the said provision of Section 4(c) that, the extent to which the release is not found to have been made bona fide, its value shall be deemed to be a gift made by the person responsible for the release. The provision envisages the release, discharge, surrender etc. by "any person". If such release, discharge, surrender etc. is bona fide, there would arise no question of any deemed gift made by the person responsible for such release, discharge or surrender. The use of the expression "the person responsible" is capable of a wider interpretation and may include not only the person who is "any person" who releases the debt etc. but also a person who may get such debt released and would, therefore, be a person responsible for the release. In other words, a creditor may release the debtor of his own or may release the debtor at the instance of some person who is responsible for getting the release of the debtor by paying the creditor money or moneys worth.

8. In the present case, clause (8) of the composite agreement made on 18th December 1968 between the co-operative society, the assessee company and Smt. Giraben, which is re-produced hereunder, would clearly show that it is the society which had released the debt of Giraben by waiving it under the agreement though there is a reference in the agreement to a resolution passed a few days earlier, on 28th November 1968, releasing her debt:

"8. The society has agreed and undertaken to waive and hereby waives the claim of the society against Smt. Giraben Sarabhai which is finally

and irrevocably settled for Rs.1,71,500=00 as her contribution in respect of flats or apartments A/91 and A/101 and garage space No. 19 in the occupation of the said Smt. Giraben Sarabhai as a tenant - member (made up of Rs.1,67,500=00 being the contribution and Rs.4,000=00 being her share in the amount deposited by the society with the Court of Small Causes, Bombay in the Suit No.531/5728 of 1965) which shall be deemed to have been satisfied in full and the society has by the resolution of the general body meeting of the society passed on 28th November 1958 released and discharged the said Smt. Giraben Sarabhai who shall continue to be a tenant - member of the said society and of the said flats A/91 and A/101 and garage space No.19 in the said "Darshan Apartments", upon tenant Co-partnership basis in the same way as all other members occupying flats in the said "Darshan Apartments" respectively allotted to them."

8.1 The waiver of the claim in favour of Smt. Giraben by the society, however, cannot be read in isolation. It was specifically recorded in the preamble of the agreement that "The parties hereto and all other parties concerned have agreed inter se to put an end to all the disputes, differences, claims and litigations". Under this agreement, the society agreed to purchase the reversionary rights, title and interest of the company in the premises including the land and building in which Giraben was having two flats and a garage. There were litigations pending in which the assessee company had claimed arrears of rent from the society. These suits were agreed to be withdrawn by the assessee. A sum of Rs.20.55 lakhs was agreed to be paid by the society for purchasing the reversionary rights. The entire exercise between the different parties to the agreement was made in order to put an end to all their disputes and differences. Nowhere in the agreement was it stated that the amount payable by Giraben to the society was to be deducted from any amount agreed to be paid by the society to the assessee for purchasing the reversionary rights. It is also nowhere mentioned in the agreement that the assessee company was entitled to receive any such amount from Giraben or that it had asked the society to waive such amount. Even if the society had waived its dues from Smt. Giraben in view of the composite nature of the agreement which required the assessee company to withdraw its suits, it cannot be said that the society had waived the amount without any consideration. In fact, the question whether the waiver by the society of its dues in

favour of Smt. Giraben was a gift by the society was never raised. The assessee company has not specifically given up any claim or released or transferred any debt or claim in favour of Giraben.

8.2 It is significant to note that the release of the debt in favour of Giraben by the society has never been questioned as sham or bogus. The authorities have proceeded on the footing that the release was a bona fide release in favour of Giraben. The transaction in form of composite agreement is also not doubted and the authorities have proceeded on the footing that it was a genuine transaction. In fact, the sale deed was executed between the society and the company pursuant to the said composite agreement. Since from the composite agreement it does not transpire that the assessee company was responsible for getting the dues of Giraben released by the society, it cannot be said that the assessee company was the "person responsible" for getting the debt of Giraben released. Even if an inference is drawn on the basis that Giraben was the sister of the Managing Director of the assessee company, that such relationship must have weighed on the society for releasing the debt of Giraben, there is nothing to show that the release was not bona fide. In fact, the release of the debt by the society in favour of Giraben has been held by the G.T.O. to have been made as a result of there being consideration between the assessee company and the society. Apart from this, the fact that the composite agreement was reached with a view to put an end to all the disputes between the parties as mutually agreed inter se between them, that would by itself constitute a good consideration for effecting such release. It is settled legal position that where the transaction is found to be bonafide, it would not amount to a transaction exigible to gift tax. (See C.G.T. v. Ansuya Sarabhai reported in (1998) 9 SCC 194). There was, therefore, neither a gift nor a deemed gift made by the assessee company in favour of Giraben as rightly held by the Tribunal.

9. We, therefore, hold that the Tribunal was right in holding that no taxable gift or deemed gift under Section 4(c) of the Gift Tax Act was proved to have been made by the company in favour of Smt. Giraben Sarabhai. The question referred to us is, therefore, answered in the affirmative in favour of the assessee and against the revenue. The reference stands disposed of accordingly with no order as to costs.

[R.K.ABICHANDANI, J.]

[K.M.MEHTA, J.]

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